

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5444**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., June 16, 2004, in Sacramento , with Chair Cynthia K. Thornton presiding.

2. Roll Call: Members

Present

Absent

Cynthia K. Thornton, Chair	x	
Miller Medearis, Vice Chair	x	
Jack Cox	x	
Don L. Novey	x	
Virginia Strom-Martin	x	
Steve Maviglio		x (Vacation)
Ann Richardson		x (Vacation)

3. Approval of the Minutes:

The minutes of the May Board meeting were approved.

4. Chair's Report:

Chair Cynthia Thornton stated that she and Executive Director/Chief ALJ Arcellana visited two appeals offices last month, Inglewood and Orange, where they discussed with staff current Agency issues. Chair Thornton also spoke at a meeting of the California Unemployment Insurance Council (CUIC).

5. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief ALJ Arcellana reported the CUIAB has received a request to loan ALJs to the Department of Industrial Relations (DIR). DIR has significant workload and funding issues. Although the CUIAB has loaned ALJs in the past, the circumstances were very different then, in that our workload was at a reasonable level, and the CUIAB was reimbursed for all costs associated with the loan. DIR does not have the funds to reimburse the CUIAB. Accordingly, given our federal funding restrictions, a loan is not likely. Coincidentally, the Department of Fair Employment and Housing has contacted the CUIAB offering to loan us some attorneys; we'll put them in touch with DIR.

Executive Director/Chief ALJ Jay Arcellana advised that the Governor's Office has asked all departments and agencies to provide it with information about real property purchases, dispositions, and leases, and their authority for the same. The purpose of the drill was not stated, but it may be related to efforts to consolidate government operations.

Executive Director/Chief ALJ Arcellana advised that the Department of Labor has appointed a new Director for Region VI, Richard Trig. CUIAB has been very fortunate to have had good relations with prior Regional Directors, and we have to hope that kind of relationship can be continued with the new Regional Director.

Lastly, ALJ II Michael DiSanto recently provided training to EDD auditors regarding representation at tax hearings.

7. Branch Reports:

a. Executive Director/Chief ALJ Arcellana announced that Fresno PALJ Betsy Temple has submitted her resignation effective upon appointment of her replacement. She has been Fresno's PALJ for approximately three years, and performed admirably under difficult circumstances.

Executive Director/Chief ALJ Arcellana reported the field met quality standards last quarter (ending March 31), with a score of 85% (80% is passing). This is the first time in over a year that we have met the quality standards, and the efforts of all of our judges, as well as those of our training coordinator, ALJ II Randy Petersen, should be acknowledged.

A statewide meeting of the LSS IIs took place earlier this month, and today the Northern California LSS Is are meeting in Sacramento; Southern California LSS Is will meet tomorrow.

Executive Director/Chief ALJ Arcellana reported for the field that registrations in May were 22,311, which represents a drop of approximately 2000 from last month, and dispositions were 22,000, a reduction of about 300. There were 3000 multi dispositions related to the grocery trade dispute.

At this point, Executive Director/Chief ALJ Arcellana introduced PALJ Gil Knipe, who has been hearing the grocery trade dispute, who made a power point presentation on the history and status of that trade dispute. (Attachment) PALJ Knipe acknowledged the very significant contributions of Martha Diaz and Ralyne Long, who provided most of the logistical support for the trade dispute.

b. Deputy Chief ALJ Julie Krebs, Appellate Operations Branch, reported that AO loaned out nine ALJs and two retired annuitant ALJs in May for field hearings. Loans will be suspended in June and July in order to cover AO vacations and to stay current on workload.

Deputy Chief ALJ Julie Krebs further reported that AO had 1486 registrations in May, which is about 6% below the average for the fiscal year, and 1479 dispositions, about 4% below average for the fiscal year. Some of those reductions are attributable to the fact that May has just 20 workdays.

Deputy Chief ALJ Julie Krebs noted that AO has been assisting with production of the pre-hearing video, and that ALJ Toole has been participating in a training video on the topic of irresistible compulsion. Also, Deputy Chief ALJ Julie Krebs made a presentation to the State Employers Advisory Council.

Finally, Deputy Chief ALJ Julie Krebs advised that AO would be providing training to the Board in preparation for the expected appeals in the grocery trade dispute.

c. Deputy Director Pam Boston, Administrative Services Branch, advised her branch would be very busy in the near future with end of the fiscal year purchases, several examinations (PALJ and LSS), and providing personnel training to support staff personnel (with the assistance of the Legal Office).

d. Deputy Director Mary Walton-Simons, Planning and Program Management Branch, reported her branch was assisting DOL with quality review training for other states, and in addition continuing its training modules for CUIAB staff, the latest related to information security.

Deputy Director Mary Walton-Simons also reported all but one of the six states participating in the case aging pilot project are pleased with its progress. This project is scheduled to be completed in October of this year.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported that board members decided over 1100 cases last month, and the on-going litigation count remained at 112. There were four new cases filed in May, and four were closed. Of the closed cases, four were wins, and one was a remand.

9. New Business

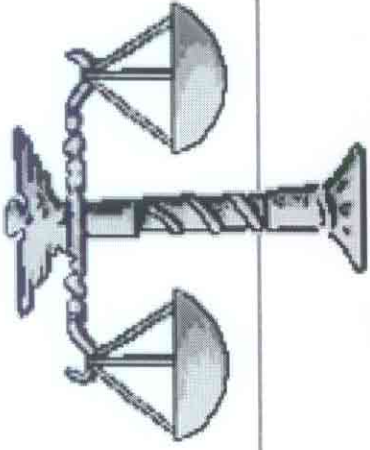
Board Member Duty Presentation—Chief Counsel Ralph Hilton (Attachment)

10. Public Comment:

No public comment was offered. Chair Thornton took this opportunity to recognize Irma Lowe, the Board Members' Executive Assistant, for her many years of fine service. Irma is retiring at the end of June.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board entered into closed session. No votes were taken on any matters in closed session.



United Grocers Trade Dispute

United Food & Commercial Workers (UFCW)

- **Vons, Albertsons, and Ralphs negotiated with the 7 locals of the UFCW seeking to replace the existing contract which expired October 5, 2004.**
- **On October 8 and 9, union members voted to reject the employer's latest offer. On October 11, the union struck Vons.**
- **On October 12, in accordance with the notice the employers had given the union, Albertsons and Ralphs locked out members of the UFCW contending that a strike against one employer was considered a strike against all.**
- **Albertsons and Ralphs did not lock out pharmacists who were union members citing health and safety reasons.**

United Food & Commercial Workers

Trade Dispute Notice 03-0014

- The Employment Development Department issued the Trade Dispute notice November 3, 2003, finding that approximately 70,000 UFCW members were disqualified under code section 1262.
- California Unemployment Insurance Appeals Board began receiving approximately 100 to 200 appeals daily after December 2003.
- The end of January 2004 CUIAB began verifying the appeals.

1262

Section 1262 of the Unemployment Insurance Code provides that a claimant is ineligible for benefits if he/she left work because of a trade dispute and for the period that he/she continues out of work because of the trade dispute is still in active progress in the establishment in which he/she is employed.

Southern California Grocer's Territory



The hearings are being held in Los Angeles, a centrally located site. The covered area is as far north as Clovis and as far south as San Ysidro.

VONS

● Appeals Verified:	523
● Hearing Notices mailed:	457

March 9, 2004

● Declarations and appearances:	133
● Untimely decisions issued:	70
● Nonappearance decisions issued:	254
● Requests to Reopen received:	8

VONS

(Continued)

- Straggler Hearing Notices mailed: 58
- Request to Reopen Hearing Notices: 8

June 22, 2004

ALBERTSONS

- Appeals Verified:

5,436

- Untimely Hearing Notices mailed:

695

March 23, 2004

- Total declarations and appearances:

180

- Untimely decisions issued:

107

- Nonappearance decisions issued:

408

ALBERTSONS

(Continued)

● Timely Hearing Notices mailed: 4,639

May 5, 2004

● Declarations and appearances: 2,459

● Withdrawal decisions issued: 105

● Nonappearance decisions issued: 2,026
● Requests to Reopen received: 63

ALBERTSONS

(Continued)

Pending Hearings

- Review of Affidavits by parties: 2,459
- Straggler appeals: 39
- Requests to Reopen: 63

RALPHS

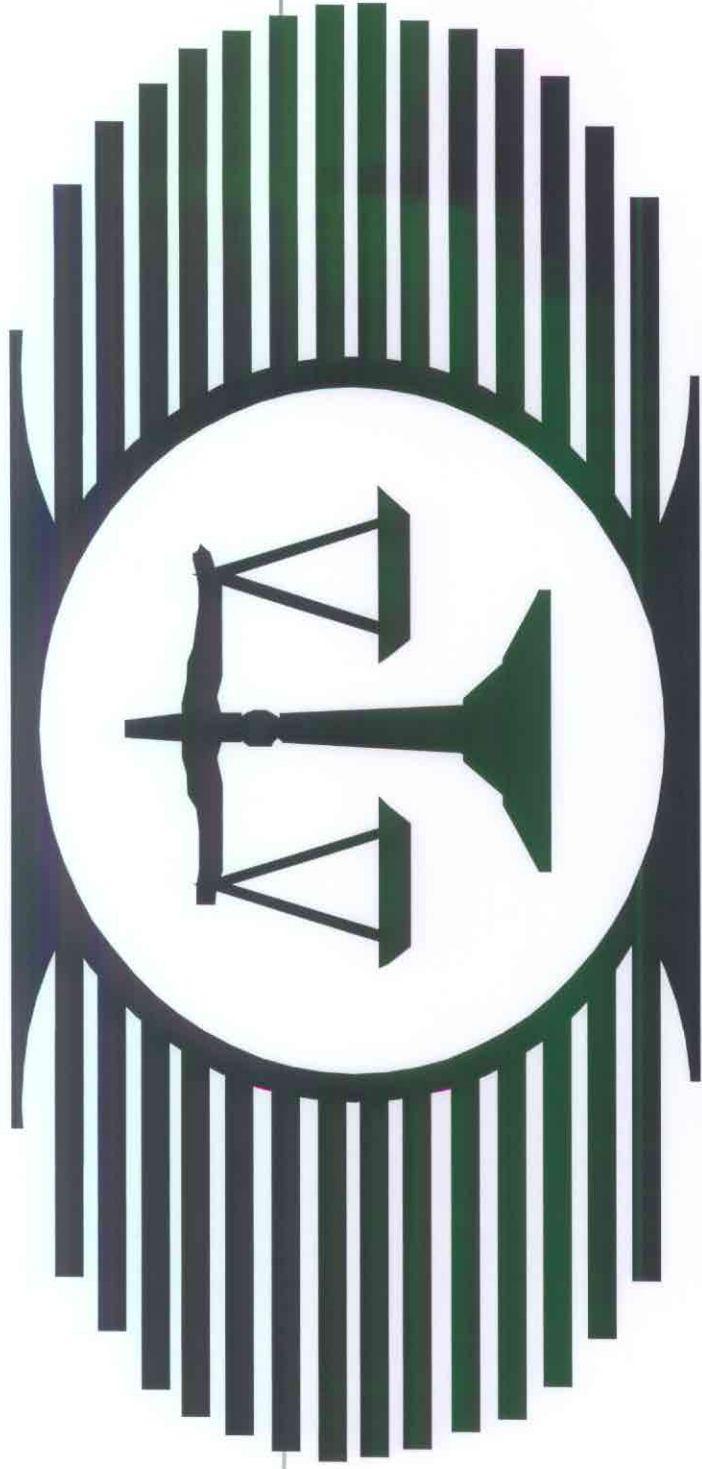
- Appeals Verified: 4,559
- Untimely Hearing Notices mailed: 841
- Timely Hearing Notices mailed: 3,718

July 15, 2004

July 20, 2004

Pending Outcome

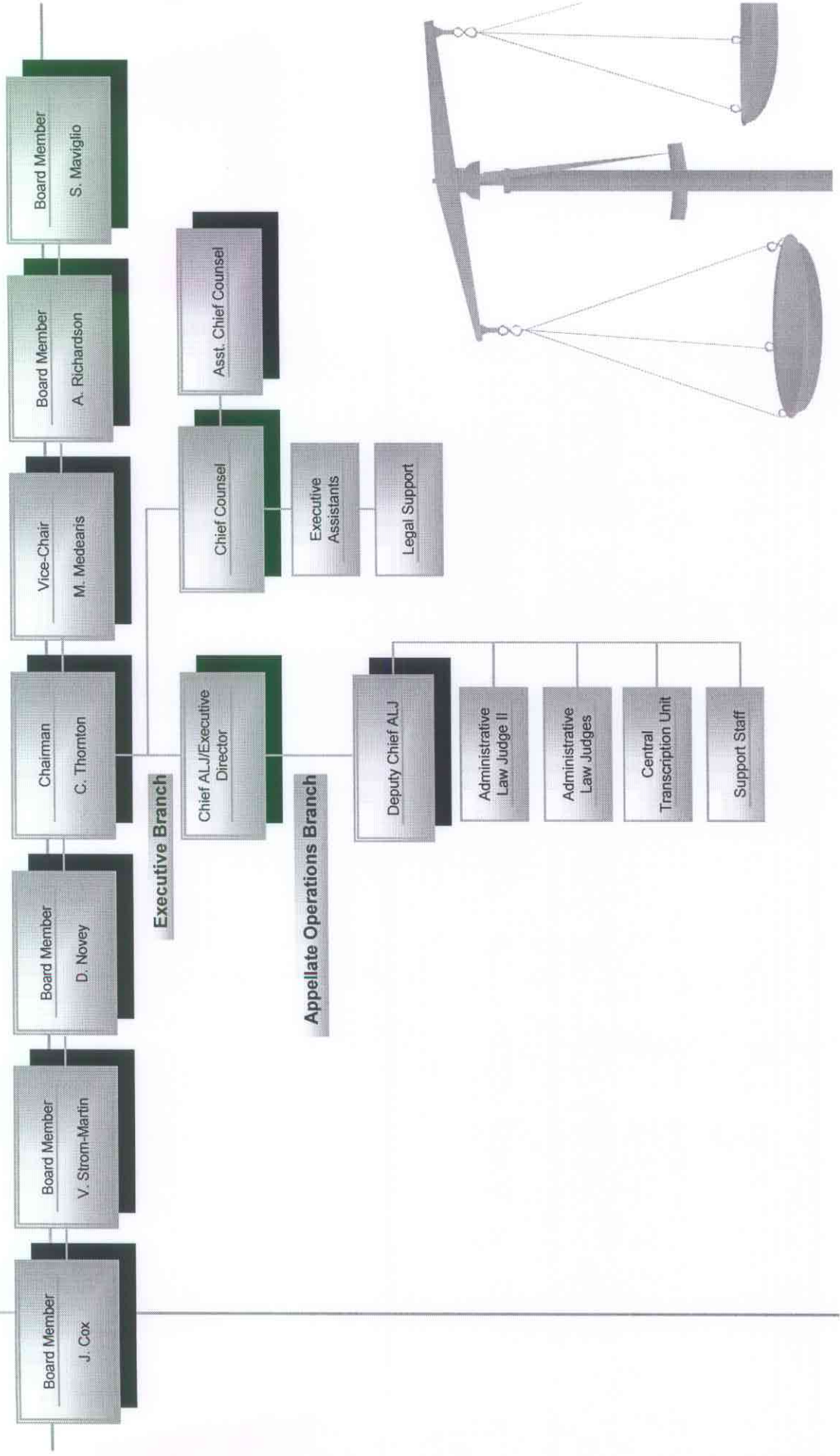
- **Straggler appeals and requests to reopen continue to be received by CUIAB.**
- **Decisions to be released at the conclusion of all the grocers hearings.**
- **Target date to complete this Trade Dispute is December 2004.**
- **Appeals filed to the decisions dismissing appeals as untimely have been forwarded to the Board – 12**
- **Appeals to other issues are being handled by the local Appeals Offices:**
 - **Overpayment on nonappearance decisions - 14**
 - **Identity Theft Issues- 4**



C·U·I·A·B

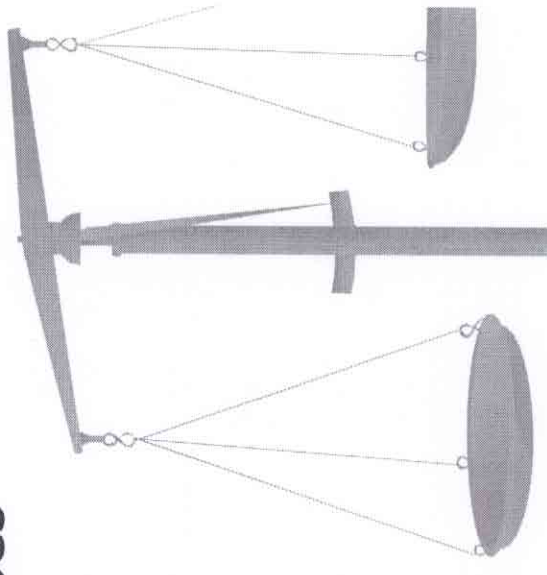
The End

Appellate Level - CUIAB



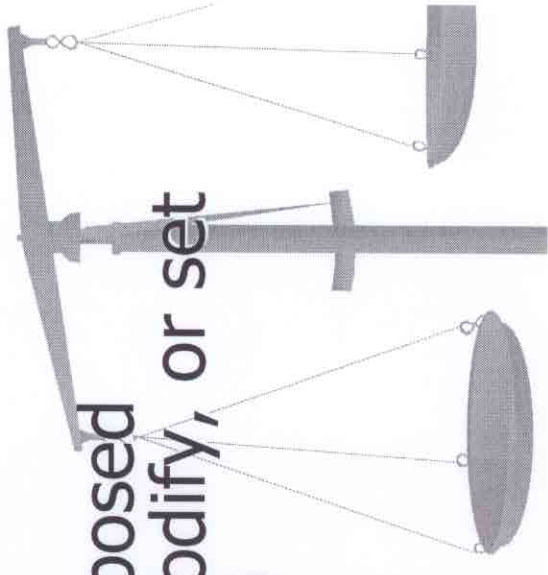
Appellate Mission

- Provide recourse to parties from trial level decisions
- Opportunity to correct errors
- Longer look at the more complex cases



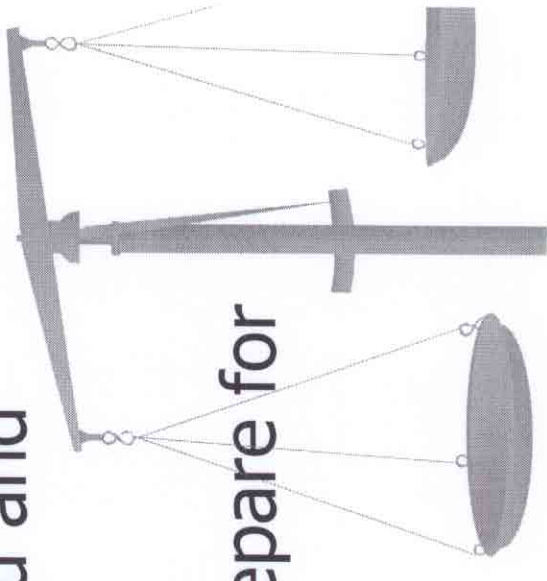
Role of Appellate Operations

- Accept and process appeals paperwork
- Assure rights of parties
- Prepare transcript of trial-level hearing
- Review case and prepare proposed decision to affirm, reverse, modify, or set aside ALJ decision (UIC 1336)



Role of Executive

- Enter cases into E-file
- Monitor case progress
- Ensure that comments and directions by Board Members are addressed and followed
- Produce final decision and prepare for issuance



Role of Board

- Act promptly on cases to meet federal time lapse requirements

- Review lower level decision, transcript, exhibits, written arguments, new evidence, and proposed decision

- Verify that proposed decision is in accord with governing laws and rules of UI and DI programs



PAF

Task: 000

Print PAF

AO-90222
AO-91166
AO-91168
AO-91140
AO-95039
AO-94477
AO-94566
AO-95011
AO-95040
AO-95384
AO-95269
AO-97197
End Of List

Group Members

Refresh Form

Print E-File List
Save Changes
Recurse
Ready for 2nd Member

ALJ Name: Kevin Toole

AO Case # 60-91674

First Member: Jack Cox

Enter Initials and Date

Approved: Date:

☐ SO ALJ Dec Date: ☐ Third Member Date:
☐ REV ALJ Dec Date: ☐ Correction Date:
☐ SMD Date: ☐ Written Dissent Date:

Comments:

Second Member:

Enter Initials and Date

Approved: Date:

☐ SO ALJ Dec Date: ☐ Correction Date:
☐ REV ALJ Dec Date: ☐ Written Dissent Date:
☐ SMD Date:

Comments:

Third Member:

Enter Initials and Date

Approved: Date:

☐ SO ALJ Dec Date: ☐ Correction Date:
☐ REV ALJ Dec Date: ☐ Written Dissent Date:
☐ SMD Date:

Comments:

Refer to CALJ FO

Refer to CALJ AO

Comments:

Done

Local network

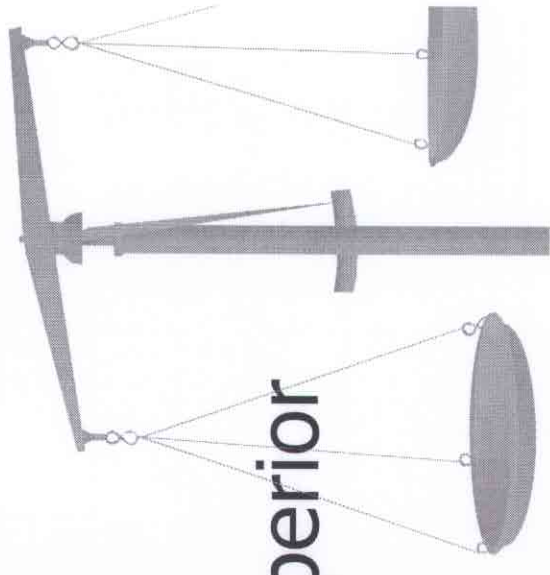
Representative Case

- First Member Review
- Second Member Review
- Need for Third Member Assignment
- Dissenting Member



What If—No Appellate Level?

- Over 18,000 appeals last year
- Parties would be deprived of economically efficient recourse to trial level decisions
- More cases would go to Superior Courts



Precedent Decisions

- UIC 409 grants Board power to designate certain decisions as precedents to establish rules of law
- Currently there are 491 precedent decisions
- Government Code 11425.60 specifically exempts precedent decisions from APA rulemaking requirements

